

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--|---|---------------------|
| In the Matter of                             | ) |                     |
|  | ) |                     |
| HUDSON COUNTY, NEW JERSEY                    | ) | File No. 0005809584 |
|  | ) |                     |
| Application for Modification of Travelers’   | ) |                     |
| Information Station WQFG689 and Request for  | ) |                     |
| Waiver of Section 90.242 of the Commission’s | ) |                     |
| Rules  | ) |                     |

**ORDER**

**Adopted: February 19, 2014****Released: February 19, 2014**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. Hudson County, New Jersey (Hudson) filed an application and attached to it “Requests for Waiver and Special Temporary Authority of Hudson County” (Waiver Petition) and “Amended Waiver Request” (Amended Petition).<sup>1</sup> Hudson requests a waiver to increase the power output of its Traveler’s Information Station transmitter to 100 watts. Hudson also requests Special Temporary Authority (STA) to operate its TIS station at greater than 10 watts of power and up to 1100 watts of power in times of declared emergency. Hudson states that granting its Waiver Petition will allow it to “better serve travelers and residents in both normal and exigent circumstances.”<sup>2</sup> For the reasons we set forth below, we deny the waiver request and dismiss the application.

2. Specifically, Hudson seeks a waiver of:

- Section 90.242(b)(4)(iii) of the Commission’s rules,<sup>3</sup> which limits Travelers’ Information Station (TIS) transmitter radio frequency output power to 10 watts;
- Section 90.242(b)(4)(iv) of the Commission’s rules,<sup>4</sup> which imposes a 2 mV/m at 1.5 kilometers field strength limit on TIS transmitters; and

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<sup>1</sup> File No. 0005809584, attached Requests for Waiver and Special Temporary Authority of Hudson County, N.J. (filed June 6, 2013) (Waiver Petition); Amended Waiver Request of Hudson County, N.J. (filed July 5, 2013) (Waiver Amendment). Hudson’s Waiver Amendment augmented the maps it submitted in support of its waiver request, and informed the Commission that Hudson had amended its application to show the requested power level. *Id.*

<sup>2</sup> Waiver Petition at 1.

<sup>3</sup> 47 C.F.R. § 90.242(b)(4)(iii).

<sup>4</sup> 47 C.F.R. § 90.242(b)(4)(iv).

- Section 90.242(a)(2)(i) of the Commission's rules,<sup>5</sup> which specifies a minimum distance the TIS transmitting site must be located from any AM broadcast station operating on a first adjacent channel.

This latter request relates to the pending construction of an adjacent-channel commercial AM station in Rockland County, New York "creating some likelihood of future interference" to that station.<sup>6</sup> For the reasons stated below, we deny both Hudson's Waiver and Amended Waiver Petitions, and its STA request.

## II. BACKGROUND

3. Hudson, located directly adjacent to New York City, states that it is very densely populated, is a major transportation hub, and is subject to serious risks, *e.g.*, "Super Storm Sandy," and the 9/11 terrorist attacks.<sup>7</sup> Hudson presently operates a single TIS transmitter in Jersey City, New Jersey, call sign WQFG689, operating at 1710 kilohertz, pursuant to a waiver granted in 2008.<sup>8</sup> Hudson states that it uses its TIS transmitter to broadcast preparedness instructions and other guidance to the public in emergency events such as Super Storm Sandy.<sup>9</sup> Hudson states that its current coverage is limited to only 6.8 square kilometers.<sup>10</sup> Hudson contends that its requested waiver would allow its TIS station to expand coverage from its current 5.6% of the County's land area to 73.9%.<sup>11</sup> It further explains that it considered expanding coverage by placing four additional TIS transmitters throughout the county but finds the cost prohibitive – up to \$160,000 in capital costs plus "additional maintenance costs of \$1,500 per site."<sup>12</sup>

4. Hudson acknowledges that its waiver could create a "likelihood of future interference" to the planned commercial AM station in Rockland County, New York.<sup>13</sup> Hudson submits, however, that its requested waivers could terminate when the Rockland station begins broadcasting or that the Commission could then order Hudson's station to operate at lower power were interference to the Rockland station to occur.<sup>14</sup> Hudson also represents that its consultant has calculated that extending the coverage of the TIS station to the jurisdictional limits of the county could be achieved if the station radiated 360 watts to the

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<sup>5</sup> 47 C.F.R. § 90.242(a)(2)(i).

<sup>6</sup> Waiver Petition at 5. Four mutually exclusive applications are pending for an AM station on frequency 1700 kilohertz in Rockland County and are subject to the Commission's competitive bidding procedures. The auction is scheduled to begin on May 6, 2014. *See* CDBS File Nos. BSF-20071005AED, BSF-20071005AEE, BSF-20071005AEF, and BSF-20071005AEG; Closed Auction of AM Broadcast Construction Permits Scheduled for May 6, 2014; Comment Sought on Competitive Bidding Procedures for Auction 84, *Public Notice*, 28 FCC Rcd 15670 (2013).

<sup>7</sup> Waiver Petition, Exhibit A at 11.

<sup>8</sup> *See* Waiver Petition at 2. The Commission's Public Safety and Homeland Security Bureau granted Hudson a waiver to operate outside of the normal TIS frequency range of 530-1700 kilohertz. *See* File No. 0003568733, attached Letter from Thomas J. Beers, Chief, Policy Division, Public Safety and Homeland Security Bureau, to William Baker, Information Station Specialist (Nov. 14, 2008) (*2008 Waiver*).

<sup>9</sup> Waiver Petition at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 6.

north and 1100 watts to the south. Those power levels, Hudson argues, could be restricted to use only during declared emergencies, pursuant to STA. It recites its belief that the “real-world risks of interference” at those higher power levels would be no greater than when the TIS station operates at 100 watts.<sup>15</sup> Hudson argues that an STA would be warranted in the case of declared emergencies because Section 1.931 of the Commission’s rules<sup>16</sup> provides that STAs may be granted where “there are extraordinary circumstances requiring operation in the public interest.”<sup>17</sup>

### III. DISCUSSION

5. Section 1.925(b)(3) of the Commission’s rules provides that: “the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>18</sup> Well-established Commission precedent holds that “[a]n applicant for a waiver faces a high hurdle even at the starting gate.”<sup>19</sup>

6. The underlying purpose of the rules governing the power level and contour restrictions applicable to TIS stations is the avoidance of interference to AM broadcast stations.<sup>20</sup> Hudson is correct that its proposed operations at power levels greater than 10 watts would cause the “likelihood of future interference” to the planned Rockland AM station operating at 1700 kilohertz. The Commission’s Media Bureau staff has examined the four locations proposed for the Rockland AM facility. It has determined that the predicted daytime interfering contour of Hudson County’s proposed 100-watt TIS operation would overlap the predicted protected daytime contours of all four competing Rockland County AM applicants. In these overlap areas, there is the potential for interference to approximately 3.9 million to 8.0 million persons, *i.e.*, between 53 and 67 percent of the total population within the predicted protected contours of the Rockland County AM applicants.<sup>21</sup> Hudson, however, argues that we should disregard interference beyond the 2 mV/m contour of the Rockland County station:

Since signal levels below 2 mV/m are normally considered inadequate to provide a usable signal ..., this makes it unlikely that the Rockland

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<sup>15</sup> *Id.*

<sup>16</sup> 47 C.F.R. § 1.931.

<sup>17</sup> Waiver Petition at 7.

<sup>18</sup> 47 C.F.R. § 1.925(b)(3).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

<sup>20</sup> See Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kilohertz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917, 924 ¶ 24 (1977) (*TIS Report and Order*). The underlying purpose of the TIS rules in general is to provide “an efficient means of communicating certain kinds of information to travelers over low power radio transmitters licensed to Local Government entities,” specifically information designed to reduce traffic congestion and to transmit “road conditions, travel restrictions, and weather forecasts to motorists.” See *id.* at 921 ¶15.

<sup>21</sup> The area in which interference would be encountered is depicted in Exhibits C1 (100 watt operation) and C2 (1 kilowatt operation) to the Hudson waiver request. Hudson asserts that the interference potential of its TIS station operating at 1 kilowatt would be no greater than that with the station operating at 100 watts. The assertion is without engineering support, is intuitively incorrect, and is contradicted by the cited exhibits.

County station would have a listenable signal in the area of predicted interference even if the Hudson County TIS station were not in operation. Thus we would expect few if any complaints of actual interference from the TIS operation.<sup>22</sup>

7. Hudson's generalized statement and its conclusion that the Rockland County station would not have a listenable signal outside the station's 2 mV/m contour is not supported by engineering analysis or other documentation. Lacking such an analysis, we are unwilling to rely on Hudson's opinion that increasing its TIS station's power by a factor of 10 over the regulatory limit would not cause harmful interference to the reception of the Rockland County station, much less its assertion that increasing the power of its TIS station by a hundredfold over the regulatory limit would cause no more interference than would result from operating the station at the 100 watt power level. We find, therefore, that granting the requested waiver would undercut the purpose of the 10 watt power limit for TIS stations and, accordingly, that Hudson has not met the first prong of the Commission's waiver standard.

8. We now proceed to analysis of Hudson's proposals under the second prong of the waiver standard: whether, "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." In support of its waiver request under the second prong of the Commission's waiver standard, Hudson states that the circumstances supporting the waiver in 2008 allowing Hudson to operate its TIS transmitter at 1710 kHz are equally applicable to its present request.<sup>23</sup> Hudson also argues that Commission precedent supports its contention of unique or unusual factual circumstances supporting waiver.<sup>24</sup> Finally, it argues that Commission precedent also supports its contention that it meets the requirements for waiver of the 1.5 km limit on field strength of 2 mV/m.<sup>25</sup> We find none of these arguments persuasive.

9. We also find that the circumstances supporting the waiver in 2008 allowing Hudson to operate its TIS transmitter at 1710 kHz are not germane to its present request. The Commission granted the 2008 waiver because Hudson had no reasonable alternative – it could not find a clear frequency for its operations in the TIS frequency range of 530-1700 kHz.<sup>26</sup> That is not the circumstance here.<sup>27</sup>

10. Nor do we find that Hudson is uniquely or unusually situated with respect to its TIS station. As Hudson notes, the Commission has previously addressed similar requests for waiver of the TIS power limits. In 2004, the Commission's Wireless Telecommunications Bureau (WTB) granted Los Angeles World Airports' (LAWA) request for a waiver to allow it to broadcast at one hundred watts of power.<sup>28</sup> WTB reasoned that LAWA was extraordinarily susceptible to terrorist attack, virtually all traffic

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<sup>22</sup> Waiver Petition at 7.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> *See 2008 Waiver* at 2.

<sup>27</sup> *See infra* ¶ 15.

<sup>28</sup> *See Los Angeles World Airports*, File No. 0001187565, *Order*, 19 FCC Rcd 4117 (WTB 2004) (*LAWA*).

to the airport was by motorized vehicle, and the immediate environs of the airport included “some of the busiest freeways in the country.”<sup>29</sup>

11. On the other hand, in 2005 and 2007, the Commission’s Public Safety and Homeland Security Bureau (PSHSB) denied similar requests to use increased power filed by Arlington County, Virginia (Arlington), and Edgecombe County, North Carolina (Edgecombe), respectively.<sup>30</sup> In the Arlington order, PSHSB distinguished the *LAWA* decision by noting that:

Arlington proposes to provide regional information regarding numerous sites. In contrast, the TIS at LAX [Los Angeles International Airport] provides information with respect to a single facility. A waiver was granted because, in light of automobile traffic patterns in Los Angeles, a wider coverage area was required to provide timely information to travelers approaching LAX.<sup>31</sup>

We find that Hudson is similar to Arlington in this respect because it seeks to provide regional information to multiple reception locations.

12. Similarly, PSHSB found Edgecombe’s objective “to provide area-wide information to individuals anywhere in the county, and not just to a particular area,”<sup>32</sup> also to be in conflict with the intended purpose of the TIS rules, which is to limit such information and not allow a TIS station to be used for area-wide information.<sup>33</sup> Like Edgecombe, Hudson is not the only jurisdiction subject to hurricanes and terrorist threat, nor is it the only county in the country with evacuation routes. Hudson’s suggestions that the Commission time a waiver to expire when the commercial AM station in Rockland begins pre-operational testing or, alternatively, to maintain higher power if there is no interference with that station<sup>34</sup> does not mitigate this wider conflict of purpose.

13. Hudson cites to two cases in support of its contention that it meets the requirements for waiver of the 2 mV/m field strength limit at a distance of 1.5 kilometers from the transmitter.<sup>35</sup> We also find these citations to be inapposite. In both cases cited by Hudson, the petitioner demonstrated that it would not impermissibly interfere with the first adjacent channel.<sup>36</sup> As discussed above, Hudson has not

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<sup>29</sup> *Id.* at 4118 ¶ 5.

<sup>30</sup> See County of Arlington, Virginia, File No. 0002108062, *Order*, 20 FCC Rcd 14785, 14786 ¶ 5 (WTB 2005) (*Arlington County* at 14786 ¶ 5 ; Letter, from Dana Shaffer, Chief, Policy Division, Public Safety and Homeland Security Bureau to Thomas Hall, Engineering Manager, Highway Information Systems, 22 FCC Rcd 12816, 12817 (PSHSB 2007) (*Edgecombe*).

<sup>31</sup> *Arlington* at 14787 ¶ 8. In *LAWA*, WTB deemed automobile traffic patterns particularly relevant because less than one-half of one percent of LAX passengers use public transportation. See *LAWA* at 4118 ¶ 5 n.14.

<sup>32</sup> See *Edgecombe* at 12818.

<sup>33</sup> See *id.*

<sup>34</sup> See Waiver Petition at 6.

<sup>35</sup> Waiver Petition at 4-5.

<sup>36</sup> See County of Arlington, Virginia, File Nos. 0002108062, 0002822293, *Order*, 22 FCC Rcd 4192, 4194-95 ¶ 7 (PSHSB 2007); Howard County Maryland, *Order*, File No. 0003163756, 24 FCC Rcd 1566, 1568-69 ¶ 9 (PSHSB 2009).

demonstrated how its proposal would not cause potential harmful interference to broadcast licensees and listeners in the affected areas.

14. We further find that Hudson has reasonable alternatives to its “high power” proposals. Although Hudson seeks to avoid the expense of additional TIS sites, we note that the 2013 *TIS Report and Order*<sup>37</sup> makes the use of multiple TIS transmitters to transmit identical information over a wider area a more viable option. Until recently, the Commission prohibited such transmitters from operating as a network. Instead it required each TIS site to provide specifically targeted information restricted to the immediate vicinity of the area served by that site. In the 2013 *TIS Report and Order*, however, the Commission amended the rules to allow for simulcast operation of TIS transmitters, so long as the content is compliant with Commission rules, *i.e.* is relevant to travelers in the vicinity of each transmitter in the network.<sup>38</sup> Accordingly, the rules would not preclude Hudson from establishing additional transmitters simulcasting identical information over a larger geographic area so long as the content is directly relevant to travelers in the immediate vicinity of each transmitter.

15. Finally, we decline to issue an “advance STA” to Hudson to operate its TIS station at more than 100 watts. The Commission issues STAs “in circumstances requiring immediate or temporary use of station.”<sup>39</sup> An application for an STA must “contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA.”<sup>40</sup> We do not have before us and cannot reasonably forecast “circumstances that fully justify and necessitate the grant of STA” in Hudson’s case. In the event that such circumstances were to exist, Hudson may then request an STA to operate its station in excess of 10 watts. At that time, Hudson will bear the evidentiary burden of showing that there “are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.”<sup>41</sup>

16. Accordingly, WE ORDER that, pursuant to Sections 4(i), 303(r), and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(f); and Section 1.925(b)(3) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3) the Requests for Waiver and Special Temporary Authority of Hudson County, N.J., filed by Hudson County, New Jersey on June 6, 2013, and the Amended Waiver Request of Hudson County, N.J., filed by Hudson County, New Jersey on July 5, 2013, ARE DENIED.

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<sup>37</sup> See Travelers’ Information Stations; American Association of Information Radio Operators Petition for Ruling on Travelers’ Information Station Rules; Highway Information Systems, Inc. Petition for Rulemaking; American Association of State Highway and Transportation Officials Petition for Rulemaking, PS Docket No. 09-19, RM-11514, RM-11531, *Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 11276 (2013) (2013 *TIS Report and Order*).

<sup>38</sup> *Id.* at 11290 ¶¶ 39-41.

<sup>39</sup> 47 C.F.R. § 1.931(a)(1).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* § 1.931(a)(2)(iv).

17. We take this action pursuant to delegated authority under Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau